

# **UNRAVELING THE WEB: Mental Health Issues Within the Criminal Justice System**

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Maricopa County Security Center  
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## **PSYCHOLOGICAL TESTING & WHAT IT MEANS**

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## Statutes and Rules:

### **§ 13-502. Insanity test; burden of proof; guilty except insane verdict**

**A.** A person may be found guilty except insane if at the time of the commission of the criminal act the person was afflicted with a mental disease or defect of such severity that the person did not know the criminal act was wrong. A mental disease or defect constituting legal insanity is an affirmative defense. Mental disease or defect does not include disorders that result from acute voluntary intoxication or withdrawal from alcohol or drugs, character defects, psychosexual disorders or impulse control disorders. Conditions that do not constitute legal insanity include but are not limited to momentary, temporary conditions arising from the pressure of the circumstances, moral decadence, depravity or passion growing out of anger, jealousy, revenge, hatred or other motives in a person who does not suffer from a mental disease or defect or an abnormality that is manifested only by criminal conduct.

**B.** In a case involving the death or serious physical injury of or the threat of death or serious physical injury to another person, if a plea of insanity is made and the court determines that a reasonable basis exists to support the plea, the court may commit the defendant to a secure state mental health facility under the department of health services, a secure county mental health evaluation and treatment facility or another secure licensed mental health facility for up to thirty days for mental health evaluation and treatment. Experts at the mental health facility who are licensed pursuant to title 32, who are familiar with this state's insanity statutes, who are specialists in mental diseases and defects and who are knowledgeable concerning insanity shall observe and evaluate the defendant. The expert or experts who examine the defendant shall submit a written report of the evaluation to the court, the defendant's attorney and the prosecutor. The court shall order the defendant to pay the costs of the mental health facility to the clerk of the court. The clerk of the court shall transmit the reimbursements to the mental health facility for all of its costs. If the court finds the defendant is indigent or otherwise is unable to pay all or any of the costs, the court shall order the county to reimburse the mental health facility for the remainder of the costs. Notwithstanding § 36-545.02, the mental health facility may maintain the reimbursements. If the court does not commit the defendant to a secure state mental health facility, a secure county mental health evaluation and treatment facility or another secure licensed mental health facility, the court shall appoint an independent expert who is licensed pursuant to title 32, who is familiar with this state's insanity statutes, who is a specialist in mental diseases and defects and who is knowledgeable concerning insanity to observe and evaluate the defendant. The expert who examines the defendant shall submit a written report of the evaluation to the court, the defendant's attorney and the prosecutor. The court shall order the defendant to pay the costs of the services of the independent expert to the clerk of the court. The clerk of the court shall transmit the reimbursements to the expert. If the court finds the defendant is indigent or otherwise unable to pay all or any of the costs, the court shall order the county to reimburse the expert for the remainder of the costs. This subsection does not prohibit the defendant or this state from obtaining additional psychiatric examinations by other mental health experts who are licensed pursuant to title 32, who are familiar with this state's insanity statutes, who are specialists in mental diseases and defects and who are knowledgeable concerning insanity.

**C.** The defendant shall prove the defendant's legal insanity by clear and convincing evidence.

**D.** If the finder of fact finds the defendant guilty except insane, the court shall determine the sentence the defendant could have received pursuant to § 13-707 or § 13-751, subsection A or the presumptive sentence the defendant could have received pursuant to section 13-702, § 13-703, § 13-704, § 13-705, § 13-706, subsection A, § 13-710 or § 13-1406 if the defendant had not been found insane, and the judge shall sentence the defendant to a term of incarceration in the state department of corrections and shall order the defendant to be placed under the jurisdiction of the psychiatric security review board and committed to a state mental health facility under the department of health services pursuant to § 13-3994 for that term. In making this determination the court shall not consider the sentence enhancements for prior convictions under section 13-703 or 13-704. The court shall expressly identify each act that the defendant committed and separately find whether each act involved the death or physical injury of or a substantial threat of death or physical injury to another person.

**E.** A guilty except insane verdict is not a criminal conviction for sentencing enhancement purposes under section 13-703 or 13-704.

### **§13-503. Effect of alcohol or drug use**

Temporary intoxication resulting from the voluntary ingestion, consumption, inhalation or injection of alcohol, an illegal substance under chapter 34 of this title or other psychoactive substances or the abuse of prescribed medications does not constitute insanity and is not a defense for any criminal act or requisite state of mind.

### **§ 13-3991. Detention of defendant during insanity; restoration to sanity**

If a defendant is committed to the state hospital for the reason that he is insane or mentally defective to the extent that he is unable to understand the proceedings against him or to assist in his defense, if charged with a crime, or for the reason that he is found insane after conviction and prior to pronouncing sentence, he shall be detained in the state hospital until he becomes sane. When the defendant becomes sane, the superintendent of the state hospital shall give notice of that fact to the sheriff and county attorney of the county. The sheriff shall thereupon, without delay, bring the defendant from the state hospital and place him in proper custody, until he is brought to trial or sentenced, or is legally discharged.

### **13-3993. Examination of defendant pleading not guilty by reason of insanity; privilege inapplicability; reports**

**A.** In any criminal prosecution in which the defendant has declared the defendant's intent to invoke an insanity defense, on a showing of unequal resources the state shall have the right to nominate and have appointed for examination of the defendant to determine the defendant's mental state the same number of medical doctors and licensed psychologists that will testify on behalf of the defense.

**B.** If a defendant in a criminal prosecution refuses to be examined by the state's mental health experts, the court shall preclude the defendant from offering expert evidence of the defendant's mental state at the time of the alleged crime.

**C.** The privilege of confidential communications between a medical doctor or licensed psychologist and the defendant as it relates to the defendant's mental state at the time of the alleged crime does not apply if any mental disability defense is raised.

**D.** If any mental disability defense is raised, both the state and the defendant shall receive prior to the trial complete copies of any report by a medical doctor or licensed psychologist who examines the defendant to determine the defendant's mental state at the time of the alleged crime or the defendant's competency.

### **§ 13-3994. Commitment; hearing; jurisdiction; definition**

**A.** A person who is found guilty except insane pursuant to § 13-502 shall be committed to a secure state mental health facility under the department of health services for a period of treatment.

**B.** If the criminal act of the person committed pursuant to subsection A of this section did not cause the death or serious physical injury of or the threat of death or serious physical injury to another person, the court shall set a hearing date within seventy-five days after the person's commitment to determine if the person is entitled to release from confinement or if the person meets the standards for civil commitment pursuant to title 36, chapter 5. The court shall notify the medical director of the mental health facility, the attorney general, the county attorney, the victim and the attorney representing the person, if any, of the date of the hearing. Fourteen days before the hearing the director of the mental health facility shall submit to the court a report addressing the person's mental health and dangerousness.

**C.** At a hearing held pursuant to subsection B of this section:

1. If the person proves by clear and convincing evidence that the person no longer suffers from a mental disease or defect and is not dangerous, the court shall order the person's release and the person's commitment ordered pursuant to § 13-502, subsection D shall terminate. Before determining to release a person pursuant to this paragraph, the court shall consider the entire criminal history of the person and shall not order the person's release if the court determines that the person has a propensity to reoffend.

2. If the court finds that the person still suffers from a mental disease or defect, may present a threat of danger to self or others, is gravely disabled, is persistently or acutely disabled or has a propensity to reoffend, it shall order the county attorney to institute civil commitment proceedings pursuant to title 36 and the person's commitment ordered pursuant to § 13-502, subsection D shall terminate.

**D.** If the court finds that the criminal act of the person committed pursuant to subsection A of this section caused the death or serious physical injury of or the threat of death or serious physical injury to another person, the court shall place the person under the jurisdiction of the psychiatric security review board. The court shall state the beginning date, length and ending date of the board's jurisdiction over the person. The length of the board's jurisdiction over the person is equal to the sentence the person could have received pursuant to § 13-707 or § 13-751, subsection A or the presumptive sentence the defendant could have received pursuant to § 13-702, subsection D, § 13-703, § 13-

704, § 13-705, § 13-706, subsection A, § 13-710 or § 13-1406. In making this determination the court shall not consider the sentence enhancements for prior convictions under § 13-703 or 13-704. The court shall retain jurisdiction of all matters that are not specifically delegated to the psychiatric security review board for the duration of the presumptive sentence.

**E.** A person who is placed under the jurisdiction of the psychiatric security review board pursuant to subsection D of this section is not eligible for discharge from the board's jurisdiction until the board's jurisdiction over the person expires.

**F.** A person who is placed under the jurisdiction of the psychiatric security review board pursuant to subsection D of this section is not entitled to a hearing before the board earlier than one hundred twenty days after the person's initial commitment. A request for a subsequent release hearing may be made pursuant to subsection H of this section. After the hearing, the board may take one of the following actions:

1. If the psychiatric security review board finds that the person still suffers from a mental disease or defect and is dangerous, the board shall order that the person remain committed at the secure state mental health facility.

2. If the person proves by clear and convincing evidence that the person no longer suffers from a mental disease or defect and is not dangerous, the psychiatric security review board shall order the person's release. The person shall remain under the jurisdiction of the board. Before determining to release a person pursuant to this paragraph, the board shall consider the entire criminal history of the person and shall not order the person's release if the board determines that the person has a propensity to reoffend.

3. If the psychiatric security review board finds that the person still suffers from a mental disease or defect or that the mental disease or defect is in stable remission but the person is no longer dangerous, the board shall order the person's conditional release. The person shall remain under the board's jurisdiction. The board in conjunction with the state mental health facility and behavioral health community providers shall specify the conditions of the person's release. The board shall continue to monitor and supervise a person who is released conditionally. Before the conditional release of a person, a supervised treatment plan shall be in place, including the necessary funding to implement the plan.

4. If the person is sentenced pursuant to § 13-704, § 13-710 or § 13-751, subsection A and the psychiatric security review board finds that the person no longer needs ongoing treatment for a mental disease and the person is dangerous or has a propensity to reoffend, the board shall order the person to be transferred to the state department of corrections for the remainder of the sentence imposed pursuant to § 13-502, subsection D. The board shall consider the safety and protection of the public.

**G.** Within twenty days after the psychiatric security review board orders a person to be transferred to the state department of corrections, the person may file a petition for a judicial determination. The person shall serve a copy of the request on the attorney general. If the person files a petition for a judicial determination, the person shall remain in a state mental health facility pending the result of the judicial determination. The person requesting the judicial determination has the burden of proving the issues by clear and convincing evidence. The judicial determination is limited to the following issues:

1. Whether the person no longer needs ongoing treatment for a mental disease.

2. Whether the person is dangerous or has a propensity to reoffend.

**H.** A person who is placed under the jurisdiction of the psychiatric security review board pursuant to subsection D of this section may not seek a new release hearing earlier than twenty months after a prior release hearing, except that the medical director of the state mental health facility may request a new release hearing for a person under the jurisdiction of the psychiatric security review board at any time. The person shall not be held in confinement for more than two years without a hearing before the board to determine if the person should be released or conditionally released.

**I.** At any hearing for release or conditional release pursuant to this section:

1. Public safety and protection are primary.
2. The applicant has the burden of proof by clear and convincing evidence.

**J.** At least fifteen days before a hearing is scheduled to consider a person's release, or before the expiration of the board's jurisdiction over the person, the state mental health facility or supervising agency shall submit to the psychiatric security review board a report on the person's mental health. The psychiatric security review board shall determine whether to release the person or to order the county attorney to institute civil commitment proceedings pursuant to title 36.

**K.** The procedures for civil commitment govern the continued commitment of the person after the expiration of the jurisdiction of the psychiatric security review board.

**L.** Before a person is released or conditionally released, at least three of the five psychiatric security review board members shall vote for the release or conditional release.

**M.** If at any time while the person remains under the jurisdiction of the psychiatric security review board it appears to the board, the chairman or vice-chairman of the board or the medical director of the state mental health facility that the person has failed to comply with the terms of the person's conditional release or that the mental health of the person has deteriorated, the board or the chairman or vice-chairman of the board for good cause or the medical director of the state mental health facility may order that the person be returned to a secure state mental health facility for evaluation or treatment. A written order of the board, the chairman or vice-chairman of the board or the medical director is sufficient warrant for any law enforcement officer to take the person into custody and to transport the person accordingly. Any sheriff or other peace officer shall execute the order and shall immediately notify the board of the person's return to the facility. Within twenty days after the person's return to a secure state mental health facility the board shall conduct a hearing and shall give notice within five days before the hearing of the time and place of the hearing to the person, the victim, the attorney representing the person, the county attorney and the attorney general.

**N.** The director of a facility that is providing treatment to a person on conditional release or any other person who is responsible for the supervision of the person may take the person or request that the person be taken into custody if there is reasonable cause to believe that the person's mental health has deteriorated to the point that the person's conditional release should be revoked and that the person is in need of immediate care, custody or treatment or that deterioration is likely because of noncompliance with a treatment program. A person who is taken into custody pursuant to this subsection shall be transported immediately to a secure state mental health facility and shall have the same rights as any person appearing before the psychiatric security review board.

**O.** Before the initial hearing or any other hearing before the psychiatric security review board on the release or conditional release of the person, the person, the attorney who is representing the person and the attorney general or county attorney who is representing the state may choose a psychiatrist licensed pursuant to title 32, chapter 13 or 17 or a psychologist licensed pursuant to title 32, chapter 19.1 to examine the person. All costs in connection with the examination shall be approved and paid by the county of the sentencing court. The written examination results shall be filed with the board and shall include an opinion as to:

1. The mental condition of the person.
2. Whether the person is dangerous.

**P.** Notwithstanding subsection O of this section, the board or the chairman of the board for good cause may order an independent mental health evaluation by a psychiatrist licensed pursuant to title 32, chapter 13 or 17 or a psychologist licensed pursuant to title 32, chapter 19.1. The written examination results shall be filed with the board pursuant to subsection O of this section.

**Q.** If a person is found guilty except insane pursuant to § 13-502, the department of health services shall assume custody of the person within ten days after receiving the order committing the person pursuant to subsection A of this section. The Arizona state hospital shall collect census data for guilty except insane treatment programs to establish maximum capacity and the allocation formula required pursuant to § 36-206, subsection D. If the Arizona state hospital reaches its funded capacity for forensic programs, the department of health services may defer the admission of the person found guilty except insane for up to an additional twenty days. The department of health services shall reimburse the county for the actual costs of each day the admission is deferred. If the department of health services is not able to admit the person found guilty except insane at the conclusion of the twenty day deferral period, the department of health services shall notify the sentencing court, the prosecutor and the defense counsel of this fact. On receipt of this notification, the prosecutor or the person's defense counsel may request a hearing to determine the likely length of time admission will continue to be deferred and whether any other action should be taken. On receipt of the request for hearing, the court shall set a hearing within ten days.

**R.** For the purposes of this section, "state mental health facility" means a secure state mental health facility under the department of health services.

## **§ 13-4506. Examination for purposes of insanity defense**

**A.** On request of the court or any party, with the consent of the defendant and after a determination that a reasonable basis exists to support the plea of insanity, the mental health expert who is appointed pursuant to § 13-4505 shall provide a screening report that includes:

1. The mental status of the defendant at the time of the offense.
2. If the expert determines that the defendant suffered from a mental disease, defect or disability at the time of the offense, the relationship of the disease, defect or disability to the alleged offense.

**B.** If the defendant's state of mind at the time of the offense will be included in the examination, the court shall not appoint the expert to address this issue until the court receives the medical and criminal history records of the defendant.

**C.** Within ten working days after the expert is appointed, the parties shall provide any additional medical or criminal history records that are requested by the court or the expert.

### **§ 13-4508. Privilege against self-incrimination; sealed reports**

**A.** The privilege against self-incrimination applies to any examination that is ordered by the court pursuant to this chapter.

**B.** Any evidence or statement that is obtained during an examination is not admissible at any proceeding to determine a defendant's guilt or innocence unless the defendant presents evidence that is intended to rebut the presumption of sanity.

**C.** Any statement made by the defendant during an examination or any evidence resulting from that statement concerning any other event or transaction is not admissible at any proceeding to determine the defendant's guilt or innocence of any other criminal charges that are based on those events or transactions.

**D.** Any statement made by the defendant or any part of the evaluations that is obtained during an examination may not be used for any purpose without the written consent of the defendant or the defendant's guardian or a court order that is entered by the court that ordered the examination or that is conducting a dependency or severance proceeding.

**E.** After a plea of guilty or guilty except insane or the trial or after the defendant is found to be unable to be restored to competence, the court shall order all the reports submitted pursuant to this section sealed. The court may order that the reports be opened only as follows:

1. For use by the court or defendant, or by the prosecutor if otherwise permitted by law, for further competency or sanity evaluations.
2. For statistical analysis.
3. When the records are deemed necessary to assist in mental health treatment pursuant to § 13-502 or 13-4517.
4. For use by the probation department or the state department of corrections if the defendant is in the custody of or is scheduled to be transferred into the custody of the state department of corrections for the purposes of assessment and supervision or monitoring of the defendant by that department.
5. For use by a mental health treatment provider that provides treatment to the defendant or that assesses the defendant for treatment.
6. For data gathering.
7. For scientific study.

**F.** Any statement made by the defendant during an examination that is conducted pursuant to this chapter or any evidence resulting from that statement is not subject to disclosure pursuant to § 36-509.

### **Rule 11.3 Appointment of Experts**

**a. Grounds for Appointment.** If the court determines that reasonable grounds for an examination exist, it shall appoint at least two mental health experts to examine the defendant and to testify regarding the defendant's mental condition. The court on its own motion or upon motion of any party may order that one of the mental health experts be a physician specializing in psychiatry and licensed as provided in sub-section (b) of this rule.

**b. Definition of Mental Health Expert.** The term "mental health expert" shall mean:

- (1) Any physician who is licensed pursuant to Title 32, Chapter 13 and 17; or
- (2) Any psychologist who is licensed pursuant to Title 32, Chapter 19.1.

The mental health expert must be familiar with this state's competency standards and statutes; familiar with the treatment, training and restoration programs that are available in this state; and approved by the court as meeting court developed guidelines. Guidelines shall include demonstration of experience in forensics matters, required attendance at a court-approved training program of not less than 16 hours and any continuing forensic education programs required by the court, and annual review criteria.

**c. Nomination and Appointment of Experts.** The moving party may include in his or her motion a list of 3 qualified mental health experts; the other party may include such a list in a response to the motion. If the court finds that reasonable grounds for a competency examination exist, the court shall appoint two or more mental health experts from its approved list to examine the defendant, report to the court in writing within 10 days after examination of the defendant and, if necessary, testify with regard to the defendant's competence. If the appointed expert is unable to conduct the examination within the time allotted, the expert shall immediately inform the court and another expert shall be appointed. Upon approval of the court, the prosecution and the defense may stipulate to the appointment of only one expert.

**d. Custody Status of Defendant During Competency Proceedings.** Custody status of the defendant shall be determined pursuant to A.R.S. § 13-4507.

**e. Experts' Reports.** The experts' reports shall conform to A.R.S. § 13-4509.

**f. Experts' Reports on Guilty Except Insane Pleas.**

(1) If the defendant raises a defense pursuant to A.R.S. § 13-502, on request of the court or any party, with the consent of the defendant, and if the offense involves death or serious physical injury that a reasonable basis exists to support the plea, the mental health expert who is appointed pursuant to A.R.S. § 13-4505 shall provide a screening report to evaluate competency that includes the provisions of A.R.S. § 13-4506.

(2) If the defendant's state of mind at the time of the offense will be included in the examination, the court shall not appoint the expert to address this issue until the court receives the medical and criminal history records of the defendant.

(3) Within ten working days after the expert is appointed, the parties shall provide any additional medical or criminal history records that are requested by the court or the expert.

**g. Additional Expert Assistance.** The court may, in its discretion, appoint additional experts and order the defendant to submit to physical, neurological or psychological examinations, if necessary for an adequate determination of the defendant's mental competency.

## **11.7. Privilege**

**a. General Restriction.** No evidence of any kind obtained under these provisions shall be admissible at any proceeding to determine guilt or innocence unless the defendant presents evidence intended to rebut the presumption of sanity.

**b. Privileged Statements of Defendant.**

(1) No statement of the defendant obtained under these provisions, or evidence resulting therefrom, concerning the events which form the basis of the charges against the defendant shall be admissible at the trial of guilt or innocence, or at any subsequent proceeding to determine guilt or innocence, without his or her consent.

(2) No statement of the defendant or evidence resulting therefrom obtained under these provisions, concerning any other events or transactions, shall be admissible at any proceeding to determine the defendant's guilt or innocence of criminal charges based on such events or transactions.

## **11.8. Records**

The reports of the experts shall be treated as confidential by the court and counsel in all respects, except the reports of other experts may be disclosed by the court and counsel to other mental health experts in proceedings related to A.R.S. § 13-4501 et seq. or as excluded in A.R.S. § 13-4508 and 4516. After the case proceeds to trial or defendant is found to be unable to regain competence, the court shall order the mental health experts' reports sealed. The court may order the reports opened only for further competency or sanity evaluation, statistical study or when necessary to assist in mental health treatment pursuant to restoration of competency or A.R.S. § 13-502.

## INSANITY DEFENSE BY STATE:

<b>ALABAMA</b>	The state uses the M'Naghten Rule. The burden of proof is on the defendant.
<b>ALASKA</b>	The state uses a modified version of the M'Naghten Rule. The burden of proof is on the defendant. A guilty but mentally ill verdict is allowed.
<b>ARIZONA</b>	The state uses a modified version of the M'Naghten Rule. The burden of proof is on the defendant. A guilty but insane verdict is allowed.
<b>ARKANSAS</b>	The state uses a modified version of the Model Penal Code rule. The burden of proof is on the defendant.
<b>CALIFORNIA</b>	The state uses the M'Naghten Rule. The burden of proof is on the defendant.
<b>COLORADO</b>	The state uses a modified version of the M'Naghten Rule with the Irresistible Impulse Test. The burden of proof is on the state.
<b>CONNECTICUT</b>	The state uses a modified version of the Model Penal Code rule. The burden of proof is on the defendant.
<b>DELAWARE</b>	The state uses a modified version of the Model Penal Code rule. The burden of proof is on the defendant.
<b>DISTRICT OF COLUMBIA</b>	The state uses the Model Penal Code rule. The burden of proof is on the defendant.
<b>FLORIDA</b>	The state uses the M'Naghten Rule. The burden of proof is on the state.
<b>GEORGIA</b>	The state uses a modified version of the M'Naghten Rule. The burden of proof is on the defendant. A guilty but mentally ill verdict is allowed.
<b>HAWAII</b>	The state uses the Model Penal Code rule. The burden of proof is on

	the defendant.
<b>IDAHO</b>	The state has abolished the insanity defense. The state allows a guilty but insane verdict.
<b>ILLINOIS</b>	The state uses a modified version of the Model Penal Code rule. The burden of proof is on the defendant.
<b>INDIANA</b>	The state uses a modified version of the Model Penal Code rule. The burden of proof is on the defendant.
<b>IOWA</b>	The state uses the M'Naghten Rule. The burden of proof is on the defendant.
<b>KANSAS</b>	The state has abolished the insanity defense.
<b>KENTUCKY</b>	The state uses the Model Penal Code rule. The burden of proof is on the defendant.
<b>LOUISIANA</b>	The state uses the M'Naghten Rule. The burden of proof is on the defendant.
<b>MAINE</b>	The state uses a modified version of the Model Penal Code rule. The burden of proof is on the defendant.
<b>MARYLAND</b>	The state uses the Model Penal Code rule. The burden of proof is on the defendant.
<b>MASSACHUSETTS</b>	The state uses the Model Penal Code rule. The burden of proof is on the state.
<b>MICHIGAN</b>	The state uses the Model Penal Code rule. The burden of proof is on the state.
<b>MINNESOTA</b>	The state uses the M'Naghten Rule. The burden of proof is on the defendant.
<b>MISSISSIPPI</b>	The state uses the M'Naghten Rule. The burden of proof is on the state. An acquitted by reason of insanity verdict is allowed.

<b>MISSOURI</b>	The state uses a modified version of the M'Naghten Rule. The burden of proof is on the defendant.
<b>MONTANA</b>	The state has abolished the insanity defense, although a guilty but insane verdict is allowed.
<b>NEBRASKA</b>	The state uses the M'Naghten Rule. The burden of proof is on the defendant.
<b>NEVADA</b>	The state uses the M'Naghten Rule. The burden of proof is on the defendant.
<b>NEW HAMPSHIRE</b>	The state uses the Durham standard. The burden of proof is on the defendant.
<b>NEW JERSEY</b>	The state uses the M'Naghten Rule. The burden of proof is on the state.
<b>NEW MEXICO</b>	The state uses the M'Naghten Rule with the Irresistible Impulse Test. The burden of proof is on the state.
<b>NEW YORK</b>	The state uses the Model Penal Code rule. The burden of proof is on the defendant.
<b>NORTH CAROLINA</b>	The state uses the M'Naghten Rule. The burden of proof is on the defendant.
<b>NORTH DAKOTA</b>	The state uses the Model Penal Code rule. The burden of proof is on the state.
<b>OHIO</b>	The state uses the M'Naghten Rule. The burden of proof is on the defendant.
<b>OKLAHOMA</b>	The state uses the M'Naghten Rule. The burden of proof is on the state.
<b>OREGON</b>	The state uses the Model Penal Code rule. The burden of proof is on the defendant.

<b>PENNSYLVANIA</b>	The state uses the M'Naghten Rule. The burden of proof is on the defendant.
<b>RHODE ISLAND</b>	The state uses the Model Penal Code rule. The burden of proof is on the defendant.
<b>SOUTH CAROLINA</b>	The state uses the M'Naghten Rule. The burden of proof is on the defendant.
<b>SOUTH DAKOTA</b>	The state uses the M'Naghten Rule. The burden of proof is on the defendant.
<b>TENNESSEE</b>	The state uses the Model Penal Code rule. The burden of proof is on the state.
<b>TEXAS</b>	The state uses the M'Naghten Rule with the Irresistible Impulse Test. The burden of proof is on the defendant.
<b>UTAH</b>	The state has abolished the insanity defense, but guilty but mentally ill verdicts are allowed.
<b>VERMONT</b>	The state uses the Model Penal Code rule. The burden of proof is on the defendant.
<b>VIRGINIA</b>	The state uses the M'Naghten Rule with the Irresistible Impulse Test. The burden of proof is on the defendant.
<b>WASHINGTON</b>	The state uses the M'Naghten Rule. The burden of proof is on the defendant.
<b>WEST VIRGINIA</b>	The state uses the Model Penal Code rule. The burden of proof is on the state.
<b>WISCONSIN</b>	The state uses the Model Penal Code rule. The burden of proof is on the defendant.
<b>WYOMING</b>	The state uses the Model Penal Code rule. The burden of proof is on the defendant.

## **I. Caselaw:**

*State v. Schantz*, 98 Ariz. 200, 403 P.2d 521 (1965)

State rejects defense of diminished capacity

There is an inference arising out of failure to call expert medical witnesses in rebuttal that defendant's evidence as to his insanity is true because it is uncontradicted.

*Todd v. Melcher*, 11 Ariz.App. 157, 462 P.2d 850 (1969)

Even one who has been judicially declared insane is criminally responsible for acts committed during a lucid interval.

*State v. Daniels*, 106 Ariz. 497, 478 P.2d 522 (1970)

Fact that defendant offered psychiatric testimony that defendant was not sane did not absolve defendant of criminal responsibility or require that verdict be directed for defendant because of failure of state to put on expert testimony to show defendant knew nature and quality of his act that he knew his act was wrong.

*State v. Cufio*, 12 Ariz.App. 461, 471 P.2d 763 (App. 1970)

Mere fact that defendant was found by trial court to be insane at time of trial and at time of sentencing did not ipso facto demonstrate insanity at time of offense.

*State v. Johnson*, 116 Ariz. 561, 570 P.2d 503 (App. 1977)

Court is not obligated to raise and adjudicate sua sponte an insanity defense of a competent defendant.

Valid guilty plea generally waives all nonjurisdictional defenses including defense of guilty by reason of insanity.

*State v. Valenzuela*, 114 Ariz. 81, 559 P.2d 201 (App. 1977)

Voluntary intoxication will not support defense of insanity even if evidence discloses that defendant did not know nature and quality of his acts at time of crime.

*State v. Druke*, 143 Ariz. 314, 693 P.2d 969 (App. 1985)

State is allowed to evaluate defendant when defendant plans on introducing mental health evidence.

*State v. Bay*, 150 Ariz. 112, 722 P.2d 280 (1986)

No inference, as matter of law, that defendant's sanity is established because he failed to call experts to rebut state's experts, defendant does have the burden of proof by clear and convincing

Lay witnesses testifying on issue of insanity must have had opportunity to observe past conduct and history of defendant.

Jury may accept lay witnesses testimony as basis of verdict even if conflicting medical testimony.

*State v. Hudson*, 152 Ariz. 121, 730 P.2d 830 (1986)

Insanity defense based on temporary insanity at time defendant committed criminal acts is not available to defendant whose voluntary use of intoxicating alcohol and/or drugs aggravates pre-existing mental disorder or creates temporary episode of mental incapacity.

*State v. Williams*, 154 Ariz. 366, 742 P.2d 1352 (1987)

Because state's doctor was able to conclude that defendant was not insane, defendant's expert not precluded on basis that defendant failed to cooperate.

*State v. Tallabas*, 155 Ariz. 321, 746 P.2d 491 (1987)

Petitioner, who called court-appointed psychiatrist as witness in support of insanity defense, impliedly consented to thorough cross-examination of psychiatrist and consented to disclosure of statements to psychiatrist at time of compulsory examination to extent that statements related to issue of insanity and supported psychiatrist's opinion, and, thus, petitioner's privilege against self-incrimination was not violated.

*State v. Mauro*, 159 Ariz. 186, 766 P.2d 59 (1988)

Admitting state's psychiatrist's testimony that defendant had requested his counsel's presence during court-ordered psychiatric examination, as evidence of defendant's sanity in murder prosecution, did not violate defendant's Fifth and Fourteenth Amendment due process rights.

*State v. Ovind*, 186 Ariz. 475, 924 P.2d 479 (App. 1996)

Being GEI doesn't negate "knowingly" and "premeditation" elements of 1<sup>st</sup> degree murder

*State v. Bunting*, 226 Ariz. 572, 250 P.3d 1201(App. 2011)

*U.S. v. Shorty*, 741 F.3d 961 (9<sup>th</sup> Cir. 2013)

Defendant has to waive a jury trial in order to do a submission to the court. Has to be on the record.

## **II. Books:**

A. Insanity, Murder Madness, and the Law

Charles Patrick Ewing

B. Minds on Trial

Charles Patrick Ewing and Joseph McCann